

109TH CONGRESS  
1ST SESSION

# H. R. 441

To amend the Internal Revenue Code of 1986 to allow a refundable credit against income tax for tuition expenses incurred for each qualifying child of the taxpayer in attending public or private elementary or secondary school.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2005

Mr. SMITH of New Jersey introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to allow a refundable credit against income tax for tuition expenses incurred for each qualifying child of the taxpayer in attending public or private elementary or secondary school.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Education, Achieve-  
5 ment, and Opportunity Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Private schools supplement the public school  
 2 system and are a vital component of our Nation's  
 3 school network.

4 (2) The public school system was created to  
 5 serve students, not the other way around. Children  
 6 should have the opportunity to attend the school sys-  
 7 tem that is most conducive to developing their abili-  
 8 ties, and parents have the right to choose the public  
 9 or private school that best meets their child's indi-  
 10 vidual needs.

11 **SEC. 3. CREDIT FOR ELEMENTARY AND SECONDARY EDU-**  
 12 **CATION EXPENSES.**

13 (a) IN GENERAL.—Subpart C of part IV of sub-  
 14 chapter A of chapter 1 of the Internal Revenue Code of  
 15 1986 (relating to refundable credits) is amended by redes-  
 16 ignating section 36 as section 37 and by inserting after  
 17 section 35 the following new section:

18 **“SEC. 36. ELEMENTARY AND SECONDARY EDUCATION EX-**  
 19 **PENSES.**

20 “(a) ALLOWANCE OF CREDIT.—

21 “(1) IN GENERAL.—In the case of an indi-  
 22 vidual, there shall be allowed as a credit against the  
 23 tax imposed by this subtitle for the taxable year the  
 24 amount of the qualified education expenses paid by

1 the taxpayer during the taxable year for each quali-  
2 fying child of the taxpayer.

3 “(2) AMOUNT PER CHILD.—The amount of  
4 credit allowable under paragraph (1) for any taxable  
5 year with respect to the qualified education expenses  
6 of each qualifying child of the taxpayer shall not ex-  
7 ceed—

8 “(A) \$2,500 for a child enrolled in an ele-  
9 mentary school for any portion of the taxable  
10 year, and

11 “(B) \$3,500 for a child enrolled in a sec-  
12 ondary school for any portion of the taxable  
13 year.

14 In any taxable year in which a child meets the re-  
15 quirements of both subparagraphs (A) and (B), the  
16 amount of credit allowable shall not exceed the sum  
17 of the amounts in such subparagraphs.

18 “(b) LIMITATION BASED ON ADJUSTED GROSS IN-  
19 COME.—

20 “(1) IN GENERAL.—The amount of the credit  
21 allowable under subsection (a) (after the application  
22 of subsection (a)(2)) shall be reduced (but not below  
23 zero) by \$50 for each \$1,000 (or fraction thereof) by  
24 which the taxpayer’s modified adjusted gross income  
25 exceeds the threshold amount.

1           “(2) DEFINITIONS AND SPECIAL RULES.—For  
2 purposes of this paragraph (1)—

3           “(A) THRESHOLD AMOUNT.—The term  
4 ‘threshold amount’ means—

5           “(i) \$150,000 in the case of a joint  
6 return, and

7           “(ii) \$75,000 in any other case.

8           “(B) MODIFIED ADJUSTED GROSS IN-  
9 COME.—The term ‘modified adjusted gross in-  
10 come’ means adjusted gross income increased  
11 by any amount excluded from gross income  
12 under section 911, 931, or 933.

13           “(C) MARITAL STATUS.—Marital status  
14 shall be determined under section 7703.

15           “(c) DEFINITIONS.—For purposes of this section—

16           “(1) QUALIFYING CHILD.—The term ‘qualifying  
17 child’ has the meaning provided by section 24(c).

18           “(2) QUALIFIED EDUCATION EXPENSES.—

19           “(A) IN GENERAL.—The term ‘qualified  
20 education expenses’ means amounts paid for—

21           “(i) tuition and fees required for the  
22 enrollment or attendance of a student at a  
23 qualified educational institution,

24           “(ii) computers, educational software,  
25 computer support services, and books re-

quired for courses of instruction at a qualified educational institution,

“(iii) academic tutoring (by a person other than the taxpayer),

“(iv) special needs services for qualifying children with disabilities (within the meaning of the Americans With Disabilities Act of 1990),

“(v) fees for transportation services to and from a private school, if the transportation is provided by the school and the school charges a fee for the transportation, and

“(vi) academic testing services.

“(B) AMOUNTS EXCLUDED.—The term does not include special school fees for nonacademic purposes, including fees for student activities, athletics, insurance, school uniforms, and nonacademic after-school activities.

“(3) QUALIFIED EDUCATIONAL INSTITUTION.—

The term ‘qualified educational institution’ means—

“(A) an elementary or secondary school (as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)), or

1                   “(B) any private, parochial, or religious  
2                   school organized for the purpose of providing el-  
3                   ementary or secondary education, or both.

4           “(d) ADJUSTMENT FOR COVERDELL SAVINGS AC-  
5 COUNT DISTRIBUTIONS.—The amount of qualified edu-  
6 cation expenses taken into account under subsection (a)  
7 with respect to an individual for a taxable year shall be  
8 reduced (before the application of subsection (b)) by the  
9 sum of any amounts not includible in gross income under  
10 section 530(d)(2)(B) for such taxable year by reason of  
11 the qualified elementary and secondary education expenses  
12 (as defined in section 530(b)(4)) of such individual for  
13 such taxable year.”.

14           (b) TECHNICAL AMENDMENTS.—

15                   (1) Paragraph (2) of section 1324(b) of title  
16                   31, United States Code, is amended by striking “or”  
17                   after “1978,” and by inserting before the period “,  
18                   or enacted by the Education, Achievement, and Op-  
19                   portunity Act”.

20                   (2) The table of sections for subpart C of part  
21                   IV of subchapter A of chapter 1 of the Internal Rev-  
22                   enue Code of 1986 is amended by striking the last  
23                   item and inserting the following new items:

“Sec. 36. Elementary and secondary education expenses.

“Sec. 37. Overpayments of tax.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this Act.

